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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFONSO GREGORIO ITZUL-ZARATE,
Defendant and Appellant.

A128613

(Marin County
Super. Ct. No. SC166253)

Appellant was convicted by jury of a felony violation of Penal Code section 646.9, subdivision (a), stalking, and of a misdemeanor violation of Penal Code section 243, subdivision (e)(1), battery. Imposition of sentence was suspended, with a probation term of three years, conditioned on service of a term of four months in county jail. He received presentence credit of 85 days for time served (43 days of actual custody credit and 42 days of conduct credits). He appeals.

Assigned counsel has submitted a *Wende*¹ brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that appellant has been advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court's attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

We find no arguable issues and therefore affirm.

¹ *People v. Wende* (1979) 25 Cal.3d 436.

I. FACTUAL AND PROCEDURAL BACKGROUND

Trial commenced on February 4, 2010. The victim, E.G., testified that she had a tumultuous and frequently violent relationship with appellant over a period of about three years. During that time appellant regularly abused E.G. both verbally and physically, including several incidents in which appellant repeatedly struck her with his fists, and multiple occasions on which he coerced sexual intercourse. He made threats to kill or injure her, her brothers, and her family in Guatemala. He told her “If you’re not going to be for me, you’re not going to be for anyone.”

On September 2, 2009, as E.G. was driving to work, she saw that appellant was following her in his car. Appellant pulled into the parking lot of E.G.’s workplace and, as she got out of her car, he leaned out of his car window and said “Just wait for—for what’s going to happen to you.” Ramiro P., a coworker and E.G.’s brother-in-law, observed that E.G. appeared very nervous and afraid that night. E.G. had asked Ramiro P. to hold her cell phone for her that night, and he testified that it rang constantly. E.G. testified that she recognized the calls to be from appellant’s telephone number. Police confirmed that 21 calls were made from appellant’s telephone number to E.G.’s cellphone between 6:15 p.m. on September 2, 2009, and 12:30 a.m. on September 3. Appellant left several voicemail messages on E.G.’s cell phone. In the voice messages, appellant repeatedly called E.G. a “whore” and a “bitch”, and told her “you’re going to get it” and that she would “disappear.”

When E.G. drove home after work that night, appellant pulled his car up next to where she had parked. Appellant opened E.G.’s car door, attempted to pull her from the vehicle, and struck her in the head with his fist. Police were called, and they found E.G. crying and shaking, with redness on her left cheek and temple.

Melinda Shrock, a psychotherapist with a master’s degree in clinical psychology, testified as a prosecution expert about the dynamics of domestic violence and the behavioral patterns of both abusers and victims of domestic violence.

E.G. testified that she is in the United States legally, but has no immigration papers. Appellant called a victim witness advocate from the district attorney’s office to

testify that she had advised E.G. that she could apply for an immigration U visa as a victim of domestic violence.

On February 19, 2010, the jury convicted appellant of both charges. Appellant filed a timely notice of appeal.

II. DISCUSSION

Over defense objection, the court permitted E.G. to testify as to acts of violence committed against her by appellant prior to the acts on September 2–3, 2009, which were charged in the information. The court admitted the evidence under both Evidence Code sections 1101, subdivision (b), and 1109.² The court found, pursuant to section 352, that the probative value outweighed any prejudicial effect.

Section 1109 permits, subject to section 352, admission of evidence of prior acts of domestic violence to show a defendant's propensity to commit such offenses.³ Federal and state due process challenges to the admission of propensity evidence under section 1109 have been consistently rejected. (See *People v. Williams* (2008) 159 Cal.App.4th 141, 147; *People v. Cabrera* (2007) 152 Cal.App.4th 695, 703–704; *People v. Price* (2004) 120 Cal.App.4th 224, 240; *People v. Brown* (2000) 77 Cal.App.4th 1324, 1331–1334; *People v. Hoover* (2000) 77 Cal.App.4th 1020, 1027.) A trial court's exercise of discretion in this area under section 352 will not be overturned on appeal absent a manifest abuse of that discretion. (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314.) The evidence was relevant and no abuse of discretion appears in the record. The jury was properly instructed on the limited purpose for which it could consider such evidence.

² All further code references are to the Evidence Code unless otherwise indicated.

³ “Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.” (§ 1109, subd. (1)(a).)

Expert testimony on battered women's syndrome was admissible under section 1107, which provides in relevant part that, "(a) [i]n a criminal action, expert testimony is admissible . . . regarding [battered women's syndrome], including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge." It is admissible to show "the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence" and is admitted when there is "a contested issue as to which [battered women's syndrome] testimony is probative. [Citation.]" (*People v. Gadlin* (2000) 78 Cal.App.4th 587, 592.) Such evidence may also be introduced where it is relevant to rehabilitate the defendant's credibility by "explain[ing] a behavior pattern that might otherwise appear unreasonable to the average person." (*People v. Day* (1992) 2 Cal.App.4th 405, 419, disapproved on another issue in *People v. Humphrey* (1996) 13 Cal.4th 1073, 1089.) The jury was properly instructed on the limited purpose for which it could consider such evidence. No arguable issue is presented.

The jury was properly instructed on the elements of the offenses charged. The evidence was sufficient to establish each element of the offense charged against appellant beyond a reasonable doubt. "In resolving sufficiency of the evidence claims, 'an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Gomez* (2008) 43 Cal.4th 249, 265.)

No arguable issues are presented as to appellant's sentence or as to the custody credits he received.

III. DISPOSITION

The judgment is affirmed.

Bruiniers, J.

We concur:

Simons, Acting P. J.

Needham, J.